



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Sytek, Inc.  
**File:** B-231789.2  
**Date:** December 7, 1988

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### **DIGEST**

1. Bidder's failure to furnish, in step one proposal or step two bid, block diagrams of its proposed network system as requested in step one solicitation, may be waived by the agency where requirement was not relevant to bid evaluation and where bidder submitted detailed narrative technical description of its system that was sufficient to determine how bidder intended to comply with the government's requirements.
2. Protest that proposed awardee's step two bid in two-step sealed bid procurement should have been rejected for failure to include cost breakdown for possible future expansion of offered network system is denied where the estimates were requested to be included in step one proposals solely for informational purposes and were not to be used in evaluation of step two bids.

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### **DECISION**

Sytek, Inc. protests a proposed award to American Communications Company (ACC) under invitation for bids (IFB) No. DAAC79-87-B-012, the second step of a two-step, sealed bidding procurement, issued by Red River Army Depot, Texarkana, Texas for a local area network system. Sytek contends that ACC submitted a nonresponsive second step bid under the IFB because ACC failed to submit required technical diagrams and certain cost estimates regarding the possible expansion of the network system "prior to the closing date of bids."

We deny the protest.

Step one, a letter for technical proposals (LTP), which included a detailed statement of work (SOW), was issued by the Army on July 20, 1987, for technical proposals for a

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broad band coaxial cable network system. Section 3.3.1.1 of the SOW, among other things, required "bidders" to provide, at a minimum, the following information "as part of the required bid package prior to the closing date of bids:"<sup>1/</sup>

"b. [A] technical description including a concept block diagram of the proposed [broad band coaxial cable network], as well as, an approximate trunk routing plan. The description shall include several options for the topology of architecture for the network with a recommended approach.

. . . . .

"i. [A] cost breakdown and cost estimate method which would be used to estimate the cost of expanding the [local area network as outlined elsewhere in the solicitation]."

In its step one proposal, ACC simply stated that it "agrees to furnish the information requested in [section 3.3.1.1]. . . . The information will be more technical and detailed during the bidding process."

Despite the missing information, the Army found the ACC proposal acceptable along with those of other firms. Step two, the IFB, was issued on April 22, 1988, to the four firms that submitted acceptable technical proposals under step one. Only Sytek and ACC submitted second step bids. ACC, in its bid, provided a detailed technical narrative description of its proposed network system in satisfaction of the information requested by the LTP in Section 3.3.1.1 b., but did not submit block diagrams. ACC also did not furnish a cost breakdown and cost estimate method for possible expansion of the system as required by Section 3.3.1.1 i.

Although ACC submitted the apparent low bid, the Army initially rejected its bid for failing to meet technical requirements of the solicitation, including the requests for block diagrams and cost breakdown estimates for the possible future expansion of the network system. ACC filed a protest with our Office against this determination to reject its bid,

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<sup>1/</sup> The requirement for submission of technical information prior to the "bid date" is unusual. Technical concerns in a two-step procurement are ordinarily resolved completely in step one. See Federal Acquisition Regulation, Subpart 14.5 (FAC 84-12).

but later withdrew its protest after the Army reviewed ACC's bid and concluded that it met all of the material and essential requirements of the solicitation. The Army proposes an award to ACC as the low bidder at \$924,700. (Sytek bid \$1,030,545.) The Army has suspended the award of a contract under the solicitation pending the outcome of Sytek's protest.

The two-step sealed bidding procedure has been recognized as combining the benefits of competitive sealed bidding with the flexibility of negotiation. 50 Comp. Gen. 346 (1970). While the second step of this procedure is conducted under the principles of sealed bidding, the first step, in furtherance of the goal of maximized competition, contemplates the qualification of as many technical proposals as possible under negotiation procedures. See 50 Comp. Gen. 346, 354. This procedure requires that technical proposals comply with the basic or essential requirements of the specifications but does not require compliance with all details of the specifications. 50 Comp. Gen. 337 (1970); 53 Comp. Gen. 47 (1973); Trans-Dyn Control Systems, Inc., B-221838; B-221838.2, May 22, 1986, 86-1 CPD ¶ 478. Thus, we have recognized that the acceptability of a first step proposal would not be affected by its failure to meet all specification details "if the procuring agency is satisfied . . . that the essential requirements of the specification will be met." 50 Comp. Gen. 337, 339, supra.

Sytek first contends that ACC's bid should be rejected as nonresponsive for failing to include required network block diagrams. The Army contends, however, that ACC's failure to submit the requested diagrams in either step one or step two was a minor informality which did not render its second step bid nonresponsive since ACC's second step bid contained a technical description of its offered network system which provides a sufficiently clear explanation of how ACC intends to comply with the functional requirements of the solicitation.

Concerning the block diagrams, we also find the Army acted reasonably in waiving this informational deficiency. The record shows that the Army considered ACC's step one proposal, as supplemented by technical information in its second step bid, to meet the essential requirements of the specifications, although lacking minor detail, i.e., the block diagrams. The Army states that it did not need the diagrams to evaluate ACC's second step bid since ACC explained its technical system in detail in the bid. The protester does not contend otherwise. Accordingly, we find this deficiency to be a minor

informality which did not detract from ACC's compliance with the essential requirements of the solicitation. We therefore conclude that such deficiency was appropriately waived by the contracting officer.

Sytek also argues that ACC's second step bid is nonresponsive for failing to provide a cost breakdown and cost estimate method, as required by the SOW, to be used to estimate the cost of possible future expansion of the network system. Sytek notes that the step one SOW reserved to the government the right to have the contractor engineer, furnish, install, and test any expansion of the existing local area network system during the warranty period, and stated that the costs for this expansion "shall be based upon cost estimates submitted as part of the required bid package as outlined in [paragraph 3.3.1.1]." Sytek also contends that since the IFB stated that price and price-related factors would constitute the basis for award, ACC's failure to submit expansion cost estimates rendered its bid nonresponsive.

The Army states that the present solicitation was issued for a specific local network system and that any cost estimates regarding future expansion were requested in step one for informational purposes only. The Army asserts that any future expansion of the system is speculative and that the cost estimates requested do not represent an option exercisable by the government. Moreover, the Army states that the expansion cost estimates were not a price-related evaluation factor in step two and, as such, were not used in determining which offeror would provide the lowest overall cost to the government. The Army also contends that Sytek's own step one proposal, on its face, indicates the speculative nature of any future expansion of the system since it presents a series of examples of cost estimates depending upon what the government's actual future needs may be.

We note that the pricing schedule in the second step IFB makes no mention of the requirement to provide cost estimates regarding expansion of the system for separate pricing or evaluation purposes.<sup>2/</sup> Additionally, we find it unreasonable for Sytek to claim that the expansion cost estimates should have been considered as an evaluation factor in determining the overall cost to the government, since any possible expansion, as presented in the step one SOW, is completely

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<sup>2/</sup>To the extent Sytek contends that the expansion cost estimates should have been listed as an evaluation factor for award, we find such a challenge to be untimely, since a protest of an allegedly defective solicitation must be filed before bid opening. 4 C.F.R. § 21.2(a)(1) (1988).

prospective and speculative in nature, and the details of any requirement for expansion of the system were not defined. Stated differently, our review of the provisions shows that the SOW simply does not obligate the successful contractor to provide expansion of the system at any specified price. Rather, the record indicates that the Army requested these estimates solely for informational purposes and not to evaluate them for purposes of contract award. Thus, we cannot find that Sytek has been prejudiced by the Army's waiver of this omission in ACC's step one proposal and step two bid.

The protest is denied.

Since the protest is denied, Sytek's claim for the costs of filing and pursuing the protest, including attorneys' fees, is also denied. Burnside-Ott Aviation Training Center, B-229793, Mar. 4, 1988, 88-1 CPD ¶ 236.

*for* *Signature of*  
James F. Hinchman  
General Counsel